

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:23-cv-00039-MR**

GRANT PAUL DALTON,)
Petitioner,)
vs.)
ALAN Z. THORNBURG,) **ORDER**
Respondent.)

)

THIS MATTER is before the Court on the Plaintiff's "Order- Buncombe County Clerk- Account Statement" [Doc. 10], which is construed as a Motion to Vacate the Order Directing Full Payment from Prison Account.¹

The pro se Plaintiff, who is incarcerated at the Buncombe County Detention Facility ("BCDF"), filed this action pursuant to 28 U.S.C. § 2241. [Doc. 1]. He filed an Application to proceed in forma pauperis [Doc. 2], and the Clerk ordered a copy of his Prison Trust Account Statement from BCDF [Doc. 3]. The Court received a trust statement from BCDF on March 15, 2023; however, it does not include the Plaintiff's name or any other identifying information. [Doc. 5]. On March 15, 2023, the Clerk then

¹ The Plaintiff is cautioned that, in the future, he must seek relief from the Court by way of a motion. Letters and other miscellaneous documents will not receive a response.

mistakenly entered an Order directing BCDF to transmit payment of the \$350 filing fee to the Court from the Plaintiff's inmate account, whereas a \$5 fee applies to § 2241 petitions. [Doc. 6].

The Plaintiff's instant Motion claims that the actual amount in his account is \$335, far less than the balance included the Statement. [Doc. 10]. He appears to seek a refund of the overpayment.

The Motion will be granted and the Order directing BCDF to transmit a \$350 payment is vacated. The Clerk will be instructed to enter an Amended Order requiring BCDF to transmit the full payment of \$5, and to refund the Plaintiff for any over-payment of funds.²

IT IS, THEREFORE, ORDERED that:

1. The Plaintiff's "Order- Buncombe County Clerk- Account Statement" [Doc. 10] is construed as a Motion to Vacate the Order Directing Full Payment from Prison Account and it is **GRANTED**.
2. The Order instructing BCDF to transmit \$350 from the Plaintiff's prisoner account [Doc. 6] is **VACATED**.
3. The Clerk is instructed to enter an Amended Order requiring the transmission of \$5 from the Plaintiff's prisoner account.

² The Clerk will not be instructed to obtain an updated account statement from BCDF at this time because the Plaintiff indicates that he has ample funds to pay the \$5 fee in full.

4. The Clerk of Court's Financial Department is instructed to reimburse the Plaintiff for the overpayment of funds beyond \$5 that may have been collected for the payment of the filing fee in this case.

The Clerk is respectfully directed to mail the Plaintiff a copy of this Order and the docket sheet.

IT IS SO ORDERED.

Signed: April 16, 2023



Martin Reidinger
Chief United States District Judge

